CREDIT CORPORATION (M) BHD

v.

RAHIMA MUHAMAD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[ORIGINATING MOTION NO: R2-25-84 OF 1997]
1 APRIL 1998

LABOUR LAW: *Employment - Company reorganisation - Dismissal by virtue of redundancy - Whether exercised in bad faith*

ADMINISTRATIVE LAW: *Remedies - Certiorari, application for - Whether Industrial Court applied correct approach in decision*

The applicant's then managing director employed the first respondent as manager of business studies. When a new managing director was appointed, the first respondent's services was terminated on the ground that her position had become redundant. The first respondent brought the matter before the Industrial Court on the ground that she had been unlawfully dismissed. The court concluded that she had been unjustly dismissed. The applicant applied to this court for a *certiorari* to quash the aforesaid decision.

The issue to be determined by this court was whether the Industrial Court was correct in its approach in deciding that the post of manager, business studies held by the first respondent had become redundant at the time of her dismissal.

Held:

[1] The principle adopted in judicial review is that the reviewing court should not reverse the decision of the lower court or tribunal based on facts unless, of course, the conclusion arrived at is so perverse that a tribunal so circumstanced would not have arrived at such conclusion.

[2] The Industrial Court was correct in finding that the applicant had terminated the services of the first respondent under the guise of redundancy through a reorganisation exercise which was *mala fide*. Such being the case the termination or dismissal was without just cause or excuse.

[Application dismissed with costs.]

Legislation referred to:
Industrial Relations Act 1967, s. 20(1)

For the applicant - R Abraham (S Sreedharan with him); M/s Shook Lin & Bok
For the respondents - LG Seah; M/s Lobo & Assoc

Reported by Michele Saw

JUDGMENT

Azmel Maamor J:

The applicant in this case applied by way of an originating motion to quash the Industrial Court's Award No. 227 of 1997 dated 20 May 1997 which held that the dismissal of the 1st respondent by the applicant was without just cause or excuse.

The facts of the case are as follows. The 1st respondent was employed by the applicant on 1 November 1989 as manager, business studies. Prior to her appointment by the applicant the 1st respondent had interaction with the applicant in that she was involved in doing productivity and efficiency exercise of the applicant company in 1987. During that time the 1st respondent was employed in a consultant company, International Management Consultant OUTFIT, which was engaged by the applicant to carry out the said exercise. The objective of such exercise was to increase the applicant's profitability and efficiency. Part of her task was to train the then general manager, Choo Weng Choong (COW1) on the operating system that had been completed. It was on her potential usefulness to the company that after the completion of the exercise the then managing director of the applicant, Clem Just, appointed the 1st respondent to hold the post, manager business studies in the applicant company which post had been vacant for some time. Her job function as mentioned in her job description was geared towards improving productivity in the applicant company. However things changed when a new managing director took over and replaced Clem Just. On 28 August 1992, the 1st respondent received a letter signed by the new managing director terminating her services with the applicant company on the ground that her position in the company had become redundant. Feeling that she had been unlawfully dismissed the 1st respondent made representations to the director-general of industrial relations under s. 20(1) of the Industrial Relations Act 1967. Upon notifying these representations to the Minister, the Minister referred the matter to the Industrial Court for an award. After holding an inquiry into the matter the Industrial Court arrived at the conclusion that the 1st respondent had been dismissed by the applicant without just cause or excuse. It was against this award of the Industrial Court that the applicant made this application. After having read and considered the written submissions from counsels of the

applicant and the 1st respondent in the light of the documents filed in court I decided that the application be dismissed with costs. My reasons for arriving at that decision are as follows.

In my view there was only one main issue that needed to be determined ie, whether there was redundancy in the post of manager, business studies that was held by the respondent at the time of her termination on 28 August 1992. The Industrial Court ruled that the post of manager, business studies was not redundant. It was the finding of the Industrial Court that the post existed even before the 1st respondent was appointed except that it was left vacant. The Industrial Court also found that after the 1st respondent was dismissed the work of business studies department was continued except that it had a new name called "Department of Planning and Method". This planning and method department did not exist when the 1st respondent was still serving the applicant. In arriving at the finding that the 1st respondent was dismissed without just cause or excuse the Industrial Court relied on the evidence of Shazarul Hisham (CLW2) who said in evidence that there was nobody else in the business studies department dismissed except the 1st respondent. CLW2 went on to say that the remaining five staff in the said department continued to work as before except the department was subsequently known as planning and method department. Even Choo Weng Choong (COW1), the only witness for the applicant, under cross-examination, admitted that there was no planning and method department before the 1st respondent was terminated. COW1 also admitted that the work of the business studies department was later carried out by the planning and method department.

In the light of such evidence I find myself unable to disagree with conclusion of the Industrial Court. This is a conclusion based on facts. The principle adopted in judicial review is that the reviewing court should not reverse the decision of the lower court or tribunal based on facts unless, of course, the conclusion arrived at is so perverse that a tribunal so circumstanced would not have arrived at such conclusion. Having regard to the facts of this case I fully agree with the conclusion arrived at by the Industrial Court that the post of the 1st respondent was not redundant and as such the dismissal of the 1st respondent was without just cause and excuse.

In arriving at the conclusion that the post of the 1st respondent was not redundant the Industrial Court had taken into consideration the applicant's contention that the company was having a reorganisation for the purpose of cost-efficient business and in the course of such exercise the post of the 1st respondent had became redundant. But the Industrial Court was not pursuaded by such contention. The Industrial Court concluded that such reorganisation exercise was *mala fide*. It was the finding of the Industrial Court that there was no proper study made on the decision to reorganise the company. Even

a though COW1 under cross examination said there was a study made on the reorganisation but COW1 was unable to produce any documents to support it. There were no board minutes produced to say that the subject matter was considered and decided by the board. The production of minutes of the board meeting held on 17 November 1992 by COW1 could not assist the applicant *b* because it was stated by COW1 that the reorganisation was decided sometime at the end of 1991 during the budget presentation for 1992. In addition to that the applicant had never suffered losses in any calendar year, even though profitability was reduced in certain years between 1989 to 1992.

On the other hand the Industrial Court agreed with the submission of the *c* counsel for the respondent that the so-called reorganisation was not for the principal purpose of ensuring cost-efficient business but more towards reducing senior managers who had been recruited under the previous management. Together with the 1st respondent there were eight other senior managers who were dismissed and all of them were appointed by the previous management. *d* The Industrial Court believed that the dismissal of the nine senior managers including the 1st respondent was by design. As such the Industrial Court concluded that the reorganisation of the applicant company was for a collateral reason. Such dismissal or termination constituted an unfair labour practice and consequently therefore without just cause or excuse.

e I find myself in full agreement with the Industrial Court that the applicant had terminated the services of the 1st respondent under guise of redundancy through a reorganisation exercise which was *mala fide*. Such being the case the termination or dismissal was without just cause or excuse. In the circumstances I dismissed the application with costs.

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